

# Physicians' legal duty to relieve suffering

The *Chin* case reminds us of our responsibility to relieve our patients' pain

The evidence that physicians and nurses do not treat pain adequately began to appear in the medical literature nearly 30 years ago.<sup>1</sup> In the following decades, the accumulated data showed that many types of pain—acute pain, cancer pain, and chronic nonmalignant pain—were being undertreated.<sup>2</sup> The reasons offered for undertreatment, usually characterized as “barriers” to effective pain relief, were remarkably consistent across the literature. These included insufficient knowledge among clinicians about the assessment and management of pain; the failure of health care institutions and professionals to make pain relief a priority; a lack of accountability for providing effective pain relief; physician concerns about regulatory scrutiny of their prescribing practices; and the persistence of myths and mis-

information about the risks of addiction, tolerance, and adverse side effects associated with opioid analgesics.<sup>3</sup>

Despite numerous calls to educate health care professionals about pain management, only the rhetoric has expanded.<sup>4</sup> Between 1995 and 2000, unrelieved pain has remained a significant problem.<sup>5</sup> During these same years, state and national organizations were urging physicians to make pain relief a priority in patient care.<sup>6</sup> Perhaps the outcome of 2 legal cases—the *James* case and the *Chin* case—might finally persuade the medical community that its duty to relieve pain and suffering is not only an ethical one but is enshrined in law.

In 1991, a North Carolina jury awarded \$15 million in compensatory and punitive damages to the family of

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Henry James, a nursing home patient who died a painful death from terminal metastatic prostate cancer.<sup>7</sup> The jury found that a nurse's refusal to administer the opioid analgesics necessary to relieve Mr James's pain, on the rationale that he would become addicted, constituted a gross departure from acceptable care. Significantly, no disciplinary action was forthcoming for either the nurse or the facility. Perhaps because the named defendants were a nurse and a nursing home, and no physician's care was at issue in the case, the implications of the jury's verdict largely escaped the attention of the medical community.

In 1998, William Bergman was admitted to Eden Medical Center in Castro Valley, California, in severe pain. Dr Wing Chin became his physician. Important details surrounding his 5-day hospitalization are in dispute between the Bergman family and those who cared for him. The hospital records indicate that at some point each day Mr Bergman's pain was rated between 7 and 10 on a 10-point pain intensity scale, 10 being the worst pain imaginable. On the day of his discharge, a pain level of 10 appears in the medical record. Although a definitive diagnosis was not reached, a chest radiograph, combined with a long history of smoking, was strongly suggestive of lung cancer. Mr Bergman declined further tests, wishing to go home and receive hospice care. He died within a week of discharge.

Disturbed by what they perceived to be an inappropriate response to Mr Bergman's pain, his family sought assistance from the national patient advocacy organization, Compassion In Dying. Based on an expert review, Compassion in Dying assisted the Bergmans in filing a complaint against Dr Chin with the California Medical Board. The board's expert concurred that the pain management of Mr Bergman was inadequate, but the board declined to take any action against Dr Chin.

Compassion in Dying then assisted the Bergmans in filing suit against Dr Chin and Eden Medical Center.<sup>8</sup> To recover damages for Mr Bergman's pain and suffering once he had died, the action had to be brought under California's elder abuse statute. To prevail under that statute, the Bergmans needed to prove that the care was not merely negligent, but grossly negligent or reckless. Eden Medical Center settled before trial. On June 13, 2001, the jury returned a verdict against Dr Chin of \$1.5 million.

The nature and magnitude of the verdicts in *James and Chin* highlight a disturbing disparity between health care professionals and the lay public regarding the importance each attaches to undertreated pain. It is a disparity, however, that physician Eric Cassell noted almost 20 years ago: "The relief of suffering, it would appear, is considered one of the primary ends of medicine by patients and lay persons, but not by the medical profession."<sup>9</sup>

Another message to physicians implicit in these verdicts is that there is a standard of care for pain management, a significant departure from which constitutes not merely malpractice but gross negligence. Even if professional boards might not hold their licensees to that standard, juries will. With the implementation of the new pain standards by the Joint Commission for the Accreditation of Healthcare Organizations, which recognize the right of patients to the appropriate assessment and management of their pain, public expectations will likely increase exponentially.<sup>10</sup> To match these expectations, physicians will need to urgently improve their knowledge, skills, and attitudes toward pain relief.

#### References

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- 4 Foley KM. Pain relief into practice: rhetoric without reform. *J Clin Oncol* 1995;13:2149-2151.
- 5 The SUPPORT [Study to Understand Prognoses and Preferences for Outcomes and Risks of Treatment] Principal Investigators. A controlled trial to improve care for seriously ill hospitalized patients. *JAMA* 1995;274:1591-1598.
- 6 *Model Guidelines for the Use of Controlled Substances for the Treatment of Pain*. Euliss, TX: Federation of State Medical Licensing Boards of the United States, Inc; 1998.
- 7 *Estate of Henry James v Hillhaven Corp*, 89 CVS 64 (NC Super Ct 1991).
- 8 *Bergman v Wing Chin, MD and Eden Medical Center*, No. H205732-1 (Cal App Dept Super Ct 1999).
- 9 Cassell EJ. The nature of suffering and the goals of medicine. *N Engl J Med* 1982;306:639-645.
- 10 Patient rights. *Accreditation Manual*. Oakbrook Terrace, IL: Joint Commission for the Accreditation of Health Care Organizations; 2000. RI 1.1.

## capsule

### Many doctors ignore patients' wishes

An international questionnaire study of end of life decisions has found that many doctors fail to comply with their patients' desires (*Journal of Medical Ethics* 2001;27:186-191). The hypothetical nature of the vignettes presented in the study arguably limits any interpretation of the results, but the authors conclude there is still a great need to emphasize the ethical dimension in both medical education and clinical practice.